

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.**

CRIMINAL APPEAL NO.883 OF 2003

Ramchandra Shankar Yadav]
aged 36 years, residing at]
Tabela Compound, Collector] Appellant
Colony, R.c.Marg, Chembur,] (Original
Mumbai 74] Accused)
(At Kolhapur Central Prison)]
versus
The State of Maharashtra] Respondent.

Mr.Yug Mohit Choudhary for the appellant.

Ms.R.M.Gadhvi, APP, for the State.

CORAM : D.G.DESHPANDE

SMT.NISHITA MHATRE, JJ.

DATED : APRIL 11, 2007.

ORAL JUDGMENT [PER D.G.DESHPANDE, J.]

1. Heard learned advocate Mr.Choudhary,
appearing for the appellant/accused and, learned

APP Ms.Gadhvi, appearing for the State.

2. The accused was convicted by the trial Court under Section 307 of the Indian Penal Code and sentenced to suffer imprisonment for life. Hence this appeal.

3. Two submissions were made by the learned advocate for the accused. Firstly, the accused was grazing the cattle of the complainant. He was paid Rs.1100/- per month as salary. But the complainant did not pay him salary for four months nor permitted him to go for attending the marriage of his sister. This was the reason for the assault by the accused upon the complainant with the help of scythe. Two doctors were examined by the prosecution, but none of them had opined that any of the injuries suffered by the complainant was likely to result in death or was likely to cause death in ordinary course of nature. Those injuries are as under :-

1. incised wound on nuchial line of back of 10 x 1 cm.
2. incised wound on right side of neck of 13

x 5 cm.

3. left scapular region of 1 x 1/2 cm.
4. right scapular region of 10 x 2 cm.
5. right rotator cuff injury, not able to elevate right hand.
6. All injuries are muscle deep.

The learned advocate for the accused contended that according to the doctors, the injuries were muscle deep and they were not serious and the complainant was discharged from Sion Hospital within less than three days. Therefore, according to him, this clearly shows that the injuries were simple in nature though one of the injuries was on the neck.

4. Apart from the aforesaid facts, the advocate for the accused pointed out that after launching attack on the complainant in the aforesaid manner, the accused repentant and he himself surrendered to the police. Considering therefore these circumstances and the background

of the attack on the complainant, he prayed that this could not be a case to convict the accused under Section 307 of the Indian Penal Code and sentenced him to suffer imprisonment for life.

5. The learned APP for the State, on the other hand, contended that the injuries were serious and the injury on the neck is grievance, according to the doctor and, therefore, the conviction was proper.

6. We are not in agreement with the submissions made by the learned APP. Looking to the background in which the attack was launched upon the complainant, nature of injuries, the period of duration of the complainant in the hospital and the fact that no doctors, out of two examined by the prosecution, has given any opinion whether the injuries were danger to life looking at the weapon, the conviction is liable to be altered to Section 324 of the Indian Penal Code and sentenced is required to be reduced. The advocate for the accused stated that the accused was in jail for one year during trial after he granted bail, but thereafter he is in custody for more than five years. In all the

total period in which the accused is in jail is more than 6 years. Hence, the following order :-

:ORDER:

The appeal is partly allowed.

The conviction of the accused and sentence imposed upon him under Section 307 of the Indian Penal Code is set aside. However, the accused is convicted under Section 324 of the Indian Penal Code and sentenced to suffer R.I. for three years and to pay fine of Rs.2000/-, in default of payment of fine, he is further sentenced to suffer R.I. for six month.

If the accused has already undergone this sentence, i.e. substantive sentence as well in default sentence and if he is not required in any other case, he should be set at liberty forthwith.

The appeal is disposed off accordingly.

[D.G.DESHPANDE, J]

[SMT.NISHITA MHATRE, J]